

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

In re:
Ohio Valley University,
Debtor.
)
)
) **Chapter 7**
)
) **Case No. 22-00056**
)

**RECEIVER'S RESPONSE TO MOTION TO AUTHORIZE THE TRUSTEE
TO EXPEND UP TO \$30,000.00 TO PRESERVE TRANSCRIPT RECORDS**

ABTV Receivership Services, LLC, the court-appointed special receiver (“Receiver”) of Ohio Valley University, Inc., pursuant to the *Agreed Order Granting Motion for Appointment of Receiver* entered on March 8, 2022 in the case styled as *UMB Bank, N.A., in its capacity as Successor Master Trustee under that certain Master Trust Indenture dated as of August 31, 2007 between Ohio Valley University, Inc., and United Bank, Inc. v. Ohio Valley University, Inc.*, Case No. 22-C-21, Circuit Court of Wood County, West Virginia (the “Receivership Order”), acting by and through its undersigned counsel, hereby files its Response to the *Motion to Authorize the Trustee to Expend Up To \$30,000.00 to Preserve Transcript Records* (Docket No. 186) (the “Trustee’s Motion”) filed by Thomas H. Fluharty, Chapter 7 Trustee (the “Chapter 7 Trustee”). In support of its Response, the Receiver respectfully states as follows:

Background

1. Ohio Valley University, Inc. (“OVU”) closed its doors permanently on December 18, 2021.
2. On February 14, 2022, UMB Bank, N.A., in its capacity as successor master trustee (the “Master Trustee”) under that certain Master Trust Indenture dated August 31, 2007 filed a *Complaint* against OVU in the Circuit Court of Wood County, West Virginia (the “State Court”),

commencing Case No. 22-C-21, seeking appointment of a special receiver to take charge of, protect, preserve, and sell the Receivership Property (as defined below).

3. On February 17, 2022, OVU filed a voluntary petition under chapter 7 of the Bankruptcy Code in this Court.

4. This Court entered an *Agreed Order Modifying the Automatic Stay* on March 4, 2022 (the “Relief from Stay Order”) terminating the automatic stay imposed under 11 U.S.C. § 362(a) and permitting entry of the Receivership Order.

5. The State Court entered the Receivership Order on March 8, 2022.

6. The Relief from Stay Order specifically excluded from Receivership Property “property transferred to the Ohio Valley University Windup Trust prior to [the bankruptcy] filing.” (Relief from Stay Order ¶ 2(c) n.1).

7. Upon information and belief, the Ohio Valley University Windup Trust (the “Windup Trust”) was formed on February 16, 2022 and student records, including all existing transcripts of former students of OVU and Northeastern Christian Junior College¹ (the “Student Records”), were transferred to the Windup Trust.

The Receivership

8. Pursuant to paragraph 7(b) of the Receivership Order, Receivership Property is defined to include the Campus Real Property.

9. Upon entry of the Receivership Order, the Receiver arrived on OVU’s campus to establish control over the Campus Real Property and to secure and protect the various buildings located on the Campus Real Property.

¹ Upon information and belief, Ohio Valley College merged with Northeastern Christian Junior College in 1993. In 2005, Ohio Valley College became OVU.

10. In securing the various buildings located on the Campus Real Property, the Receiver took physical possession of the following Student Records previously transferred to the Windup Trust:

- a. Paper files. All available paper Student Records are stored in approximately thirty (30) file cabinets in two locked offices on OVU's campus.
- b. Digital files. Student Records are stored and managed electronically.

11. On September 21, 2022, the Receiver filed a *Motion for Approval to Abandon and Transfer Student Records* (the "Motion to Abandon") in the State Court seeking authorization to abandon the Student Records as Receivership Property and to transfer the Student Records to the Windup Trust in accordance with the Relief from Stay Order. The Master Trustee and Chapter 7 Trustee consented to the relief requested in the Motion to Abandon and counsel for the Windup Trust provided contact information for requests for Students Records. A copy of the Motion to Abandon is attached hereto as Exhibit A.

12. On November 7, 2022, the State Court entered an Order granting the Motion to Abandon. The Order specifically provides:

From the date of the entry of this Order, the Ohio Valley University Windup Trust shall be responsible for the safe-keeping of all Student Records transferred to it hereunder. Further, the Ohio Valley University Windup Trust shall be responsible, at its own cost, for packing, moving and transporting the Student Records from OVU's campus. All requests for Student Records should be directed to the Ohio Valley University Windup Trust as follows:

Ohio Valley University Windup Trust
c/o Martin P. Sheehan, Esq.
Sheehan & Associates, PLLC
1 Community St., Suite 200
Wheeling, WV 26003

(Order ¶ 3). A copy of the Order is attached hereto as Exhibit B.

13. On November 8, 2022, the Receiver served the Order granting the Motion to Abandon in accordance with the Receivership Order. A copy of the *Notice of Entry of Order Granting Motion for Approval to Abandon and Transfer Student Records* filed with the State Court on November 8, 2022 is attached hereto as Exhibit C.

14. As of the date of filing this Response, the Windup Trust has possession of all Students Records that are digital files and is in the process of removing from the Campus Real Property the Student Records that are paper files stored in approximately thirty (30) file cabinets.

The Receiver files its Response to the Trustee's Motion to provide background information regarding the Student Records and to advise this Court of the actions taken in State Court with respect to the Student Records.

Dated: March 9, 2023

/s/ Brandy M. Rapp

Brandy M. Rapp (WV Bar No. #10200)
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CERTIFICATE OF SERVICE

I hereby certify that on March 9, 2023, a true and correct copy of the foregoing *Receiver's Response to Motion to Authorize the Trustee to Expend Up To \$30,000.00 To Preserve Transcript Records* was filed and served via the Court's Electronic Case Filing System on all parties receiving such notification.

/s/ Brandy M. Rapp